

Case No.: \_\_\_\_\_

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION \_\_\_\_\_**

CHURCH OF SCIENTOLOGY  
INTERNATIONAL, A California  
nonprofit religious corporation,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE  
OF CALIFORNIA, COUNTY OF  
MARIN,

Respondent.

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GERALD ARMSTRONG,

Real Parties in Interest.

Marin County Superior Court Case No.  
157680.

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**PETITION FOR A WRIT OF CERTIORARI OR, IN THE ALTERNATIVE, A  
WRIT OF MANDAMUS**

**After Order re Sentences For Contempt by The Hon. Lynn Duryee,  
County of Marin**

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**PETITION FOR A WRIT OF CERTIORARI OR, IN THE ALTERNATIVE, A  
WRIT OF MANDATE**

To the Honorable Presiding Justice and the Honorable Associate Justices of the  
Court of Appeal of the State of California:

Petitioner Church of Scientology International ("CSI") hereby petitions for a writ  
of certiorari, or in the alternative for a writ of mandate, from an order of the Respondent  
Superior Court dated May 20, 2004.

**I. INTRODUCTION**

This petition arises from an order of the Superior Court, Marin County, that  
effectively excuses defendant Gerald Armstrong for over 100 adjudicated contempts of

court and refuses to enforce prior sentences issued by earlier judges of fine and jail for 14 previously adjudicated contempts of court.

The essential facts are not in dispute. Armstrong and CSI entered into a settlement agreement in 1986, pursuant to which Armstrong received \$800,000, dismissed certain legal claims against the Church, and agreed, *inter alia*, to strict confidentiality, to forego any public mention of Scientology and its leadership, and to avoid voluntarily assisting in litigation against Scientology churches. The agreement provided for liquidated damages for each breach of the contract.

Beginning in approximately 1990, and continuing to this day, Armstrong repeatedly and openly breached the agreement. When CSI obtained a money judgment against him for his breaches, he avoided the judgment by declaring bankruptcy, after either spending or "giving away" the \$800,000 he received in the settlement. When CSI obtained a permanent injunction against further breaches, Armstrong fled the jurisdiction and moved to Canada, from where he openly and contemptuously disobeyed the court order and publicly defamed Superior Court Judge Gary Thomas by alleging that he had either been bribed or extorted by CSI.

Armstrong even appeared in public and on television and radio to publicly attack Scientology and its leadership, announcing with glee that he was violating the court order by doing so. Indeed, following the hearing in this case in which Superior Judge Lynn Duryee refused to enforce both the prior and new contempt sentences and rendered the liquidated damages provision of the contract unenforceable for future breaches,

Armstrong triumphantly announced to the press that he now was free to ignore both the settlement agreement and the injunction, and that he intended to do so.

In making its rulings, the court below not only committed fundamental errors of law and grossly abused its discretion, it also usurped judicial power by acting in excess of its jurisdiction.

## PETITION

### II. BENEFICIAL INTEREST OF PETITIONERS; CAPACITIES OF RESPONDENT AND REAL PARTY-IN-INTEREST

1. Petitioner, Church of Scientology International, is a not-for-profit religious corporation, recognized by the Internal Revenue Service as a church exempt from taxation under 26 U.S.C. § 501 (c)(3). Petitioner is the plaintiff in the underlying Superior Court consolidated action entitled *Church of Scientology International v. Gerald Armstrong*, Marin Cty. Superior Court Nos. 152229 and 157680 (Consolidated) (“the Action”). Petitioner is also the plaintiff in the related Superior Court action entitled *Church of Scientology International v. Gerald Armstrong*, Marin Cty. Superior Court No. CV 021632 (“the Related Action”). On July 15, 2004 CSI filed a related appeal from the Superior Court’s judgment in the Related Action.

2. The Respondent Superior Court of the State of California, County of Marin, is the Superior Court exercising judicial functions in both the Action and the Related Action.

3. Real Party in Interest, Gerald Armstrong is the defendant in the Action and the Related Action.



### III. STATEMENT OF FACTS AND PROCEEDINGS BELOW

#### A. First Breach of Contract Action

4. In February 1992, plaintiff Church of Scientology International ("CSI") brought the Action against defendant Gerald Armstrong for breaching a settlement agreement entered into by the parties on December 6, 1986 (the "Agreement"). CSI alleged that Armstrong repeatedly and openly violated various portions of the Agreement, including paragraph 7(D), which provided:

Plaintiff agrees never to create or publish, or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, and writing or broadcast or to assist another to create, write, film, or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals or entities listed in Paragraph 1 above....Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releases would be entitled to liquidated damages in the amount of \$50,000 for each such breach.

Exhibits in Support of Petition for A Writ of Certiorari ["Exs."], Tab 1, [Pg. Nos. 06-08], Mutual Release of All Claims and Settlement Agreement.<sup>1</sup>

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<sup>1</sup> The bracketed page citations are to the sequential number at the bottom of each Exhibit page.

CSI sought liquidated damages for each breach and injunctive relief to prevent any future breaches. Armstrong asserted more than forty affirmative defenses, including fraud, duress and that the liquidated damages provision was unreasonable and unenforceable. Exs. Tab 3, [Pg. Nos. 063-078], Answer of Gerry Armstrong.

5. On October 17, 1995, Superior Court Judge Gary Thomas upheld the validity of the Agreement, awarded CSI \$300,000 in liquidated damages for six specified breaches, and entered an order of permanent injunction, stating as follows:

1. Plaintiff and defendant freely and voluntarily entered into a Mutual Release of All Claims and Settlement Agreement in December, 1986.
2. Plaintiff performed all of its obligations pursuant to the Agreement.
3. Defendant Armstrong received substantial consideration for the promises which he made in the Agreement.
4. Since, 1990, defendant Armstrong has repeatedly breached paragraphs 7(D)....
9. Defendant Armstrong has reiterated numerous times that he intends to continue breaching the Agreement unless he is ordered by the Court to cease and desist.....
10. Plaintiff's legal remedies are inadequate insofar as the scope of the relief ordered below is concerned.....

Accordingly, the Court finds that entry of a permanent injunction in this action is necessary in this action because pecuniary compensation could not afford the Church adequate relief, and the restraint is necessary in order to prevent a multiplicity of actions for breach of contract.

Exs. Tab 5, ¶10, [Pg. Nos. 090-091], Order of Permanent Injunction.

The court permanently enjoined Armstrong from "doing directly or indirectly any of the following":

Facilitating in any manner the creation, publication, broadcast, writing, filming, audio recording, video recording,

electronic recording or reproduction of any kind of any book, article, film, television program, radio program, treatment, declaration, screenplay or other literary, artistic or documentary work of any kind which discusses, refers to or mentions Scientology, the Church and/or any of the Beneficiaries (which includes plaintiff herein, CSI);

5. Discussing with anyone, not a member of Armstrong's immediate family or his attorney, Scientology, the Church and/or any of the Beneficiaries (including CSI)."

Id.

6. On May 2, 1996, the Order of Permanent Injunction was incorporated into a judgment against Armstrong. Exs. Tab 6, [Pg. Nos. 094-096], Judgment. Armstrong's appeal from the permanent injunction was dismissed by the Fourth District Court of Appeal on December 23, 1997. Exs. Tab 7, [Pg. No. 97], Court of Appeal Order Granting Dismissal of Appeal.

B. First Order of Contempt

7. On February 18, 1997, CSI moved for contempt for Armstrong's violation of the injunction, based on Armstrong's voluntarily filing of a declaration in a case pending in the United States District Court for the Northern District of California on behalf of a party in litigation with a Scientology church. In that declaration, Armstrong stated that the injunction issued by Judge Thomas "is an indicator of Scientology's corruption of the judicial process." On June 5, 1997, Judge Thomas issued an order of contempt, finding that Armstrong "willfully disobeyed the Order." Exs. Tab 8, [Pg. Nos. 098-100], Order of Contempt. Judge Thomas ordered that Armstrong pay a fine of \$1,000 and be confined in the County Jail for two days. Id. [Pg. No. 100]. Armstrong

fled the jurisdiction, and on August 6, 1997, Judge Thomas issued a bench warrant for his arrest. Exs. Tab 9, [Pg. No. 101], Bench Warrant.

C. Second Order of Contempt

On December 2, 1997 CSI again moved for an order of contempt, based upon Armstrong's numerous additional, open violations of the injunction. On February 20, 1998, Judge Thomas issued a Second Order of Contempt, finding that Armstrong "willfully disobeyed the Order...in thirteen (13) separate incidents between September 2, 1997 and November 26, 1997." Exs. Tab 10, ¶4, [Pg. No. 104], Order of Contempt. Judge Thomas imposed a fine of \$200 per incident (for a total of \$2,600) and ordered Armstrong confined in the County Jail for a period of two days for each separate incident, for a total of 26 days. Id. [Pg. No. 107]. The Court issued a second bench warrant for Armstrong's arrest when he failed to surrender to serve his sentence. Exs. Tab 11, [Pg. No. 108], Bench Warrant.

D. Third Order of Contempt

8. On November 13, 2000, CSI again moved for an order of contempt against Armstrong for engaging in an additional 131 breaches of the injunction. Armstrong not only did not deny the allegations but contemptuously boasted in his affidavit that, "I have violated Scientology's Injunction thousands of times in my communications since February, 1998, and tens of thousands of times since former Marin County Superior Court Judge Gary Thomas signed it in October, 1995." Exs. Tab 12, ¶6, [Pg. No. 115], Armstrong's Opposition to Order to Show Cause. Armstrong defiantly denied the

authority of the Superior Court to issue or enforce the injunction, and stated his intention never to comply with it:

This Court has no authority to make unlawful orders; which include orders against public policy, orders in flagrant unnecessary violation of Constitutional guarantees, orders which are impossible to perform, and orders which generate a great stupidity.

\* \* \*

There are no “adequate criminal sanctions” which can be ordered to make me comply with the Injunction, because it is not lawful. What Judge Thomas did and said, since he would not logically address the defenses and issues I raised, has served only to strengthen my conviction that the Injunction he signed is unlawful, and therefore need not be complied with and cannot legally be enforced.

Id. ¶18, 19, [Pg. No. 122].

9. On July 13, 2001, Superior Court Judge Vernon F. Smith issued yet a third Order of Contempt, finding that “Armstrong repeatedly, willfully and intentionally disobeyed” the injunction over 131 additional times. Exs. Tab 13, ¶5, [Pg. No. 143], Order of Contempt. Judge Smith postponed imposing a specific punishment until “such time as Armstrong is apprehended [and] brought before this Court.” Id. [Pg. No. 144].

E. Second Breach of Contract Action

10. On April 2, 2002, CSI initiated the Related Action for breach of contract against Armstrong, seeking damages for the 131 prior violations, plus an additional 70 breaches. CSI sought compensation under the liquidated damages provision of the Agreement. Exs. Tab 14, [Pg. No. 154], Complaint for Damages. Armstrong admitted all

201 breaches in his answer to the complaint, which he signed, saying that he did so “at the will of God.” He further stated that he would continue to do so because, in his view, the court’s injunction was “illegal, unconstitutional, greatly stupid, impossible to perform, anti-public policy, anti-American, anti-religion, diabolical, insane and clearly unenforceable,” and because, by issuing the injunction, the Court “abetted...illegal blackmail.” Exs. Tab 15, [Pg. Nos. 213, 222-223], Answer of Gerry Armstrong.

11. The Related Action was assigned to Superior Court Judge Lynn Duryee and set for trial on April 9, 2004. On that same day, the first Action, in which the contempt findings and judgments previously had been issued, was reassigned to Judge Duryee.

12. On the day of trial in the Related Action, Armstrong appeared in person with his attorney. Exs. Tab 16, Reporter's Transcript of Proceedings (hereinafter "RT\_\_"), [Pg. No. 298]. The Court stayed enforcement of the bench warrants in the first Action until after trial. RT 6, [Pg. No. 301]. No actual trial, however, took place. Instead, the Court first heard argument on plaintiff CSI's motion in limine to preclude Armstrong from relitigating the validity and enforceability of the Settlement Agreement. After taking that motion under submission, the Court invited opening arguments from counsel. RT 25 [Pg. No. 320]. In the midst of Armstrong's counsel's opening statement, Judge Duryee interjected that she would “consolidate these two matters [*i.e.*, the third contempt sentencing in the Action and the damages trial in the Related Action] and have the contempt - - further hearing in the [third] contempt citation heard at the same time as the trial on this matter [*i.e.*, the second breach of contract claim for damages].” RT 44

[Pg. No. 339]. After a recess, Judge Duryee reiterated that "I am treating this now as a hearing on the sentencing that Judge Smith set." RT 46 [Pg. No. 341].

13. At the conclusion of Greene's argument, plaintiff moved for judgment on the breach of contract claim. RT 49 [Pg. No. 344]. After a brief recess, the Court announced its tentative rulings. First, the Court held that Armstrong's proposed defenses to the second beach of contract action were both precluded by *res judicata* and, in any event, were without merit.

The court agrees with the motion for directed verdict on the defenses. That is that none of the circumstances that were described in the opening statement by Mr. Greene amount to a defense in this case. And it appears that there is no quarrel but that these 131 acts did occur. And it's quite clear from Exhibit Number 1, that the settlement agreement did provide for liquidated damages for violating the terms of the settlement agreement. And it also is quite clear from the court's judicial notice that this matter has been thoroughly litigated and that a trial is not required for a final resolution of the matter.

So I do believe that these defenses have been previously litigated, previously ruled upon, and in addition the court has listened to the opening statements of the defense. And even if those things were proven to be true, there is no ambiguity in the settlement agreement. And defendant, in accepting that money, did undertake to abide by the terms and conditions of the settlement agreement. And that particular provision was not bilateral, it was unilateral. So that even if the Church said horrible things about Mr. Armstrong, he is not justified to violate the terms of the settlement agreement, but would have other remedies under the law.

14. On the question of damages, however, the Court held that CSI was only entitled to recover in damages the same amount that Armstrong had received 18 years ago when the contract was entered into. Since Armstrong previously had been assessed

damages of \$300,000 (which he never paid, having declared bankruptcy), the Court limited the liquidated damages to \$500,000, which it characterized not as compensation, but as “punishment.”

Mr. Armstrong received a benefit under the settlement agreement of \$800,000. And I think it would be unconscionable to *punish* him beyond what the benefit was that conferred to him. He’s previously been *sanctioned* in the sum of \$300,000.

So my thought is to enter judgment for the plaintiff, on the admitted violations, of \$500,000.

(emphasis added). RT 56 [Pg. No. 350].

F. Discharge of Sentences for First and Second Orders of Contempt

15. Then, in the next breath, without any notice or warning that the issue was even before the Court, Judge Duryee vacated the two prior sentences of contempt previously issued by Judge Thomas in the Action, on the ground that the new judgment in the Related Action for \$500,000 in compensatory damages (which Armstrong is utterly incapable of paying) was punishment enough, and discharged the prior contempts (which concerned *different* violations than the breaches at issue for which the Court awarded the \$500,000 judgment):

And in my view the bench warrants that have been previously issued on the contempt citation, which call for, looks like, around 30 days in jail, I would discharge the jail and the contempt citation, the contempt punishment, with the entry of the judgment of \$500,000.

RT 56-57 [Pg. No. 350-351].

After hearing from counsel, the Court adhered to its stated intention:



Judgment is entered in favor of the plaintiff and against the defendant in the sum of \$500,000. And the time that was ordered on the contempt citations is deemed served.

RT 62 [Pg. No. 356]. Armstrong, of course, never “served” a minute of time for his contempts.

G. Sentencing and Discharge of Sentence for Third Order of Contempt

16. CSI’s counsel then reminded the Court that it had not sentenced Armstrong for the third contempt order, which encompassed 131 additional contemptuous acts. The Court responded:

So on the order of contempt issued July 13th, 2001, the court sentences you to five days in jail and a fine of \$1,000. The fine is - - the fine is concurrent with the [civil] judgment that’s been rendered in this action [*i.e.*; the Related Action] and the jail time is deemed served by your appearance in court here today.

RT 63, [Pg. No. 357]. The Court did not explain how a fine for criminal contempt payable to the court can be “concurrent” with a civil judgment for damages payable to a party. Nor did it explain how an appearance in court is the equivalent of serving a five-day jail sentence.

After submission of differing proposed orders by counsel for CSI and Armstrong, the Court entered its own written orders on May 20, 2004, which incorporated these rulings. Exs. Tab 17, [pg. Nos. 359-360], Order re Sentences for Contempt, Exs. Tab 18; [Pg. Nos. 361-362], Order Granting Plaintiff’s Motion for Judgment.

H. Appeal of the Related Action

17. On May 20, 2004, the Superior Court issued its final judgment in the Related Action. CSI appealed that judgment on July 15, 2004.

#### **IV. WHY EXTRAORDINARY RELIEF IS NECESSARY**

18. The Superior Court lacked jurisdiction either to alter the final and conclusive sentences for the First and Second Orders of Contempt, or to essentially override the sentence imposed in by the Court's own, final contempt sentence. The original orders must be enforced.

19. The Superior Court committed clear legal error in holding that a compensatory damages judgment in the Related Action for different violations of the contract and permanent injunction can satisfy orders of criminal contempt in the Action.

20. The Superior Court's Order undermines respect for the power and authority of the Court and its lawful orders by essentially excusing Armstrong for his repeated violations of the Court's injunction and his public defiance of the Court's authority.

#### **V. BASIS OF RELIEF AND ABSENCE OF OTHER REMEDIES**

21. The basis of the relief is further set forth in the attached Memorandum of Points and Authorities, which is incorporated by reference into this verified Petition as though fully set forth.

22. CSI cannot appeal from the Court's order on the contempt sentences. California Code of Civil Procedure, §1222. Relief by certiorari or mandamus is appropriate. *Butler v Butler*, 255 Cal. App 2d 132, 136, 62 Cal. Rptr. 825 (1967.)

#### **VI. TIMELESSNESS OF PETITION**

23. The Superior Court's Order was dated May 20, 2004. This petition is filed within 57 days of that date.

## VII. PRAYER FOR RELIEF

Wherefore, petitioner requests that this Court:

1. Issue a preemptory writ of mandate or of certiorari, or such other relief as may be appropriate, directing the Respondent Superior Court to vacate its Order re Sentences for Contempt and reinstate the original sentences;
2. Award petitioner recovery of its costs; and
3. Grant such other relief as may be just and proper.

Dated: July 15, 2004

WILSON CAMPILONGO LLP

By: \_\_\_\_\_



ANDREW H. WILSON

Attorney for Petitioner


CHURCH OF SCIENTOLOGY

### VERIFICATION

I, the undersigned, declare as follows:

I, Andrew H. Wilson, am attorney for the Petitioner in the within action. I am verifying this Petition and supporting papers rather than Petitioner because most of the facts set forth herein are particularly within my personal knowledge, rather than Petitioner's, making my verification appropriate under Code of Civil Procedure § 446. I have read the foregoing Petition for Writ of Certiorari or, in The Alternative, A Writ of Mandamus, and the exhibits in support thereof separately filed with this Court, and know the contents thereof, which are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of July, 2004, at Sausalito. California.

  
\_\_\_\_\_  
Andrew H. Wilson

## MEMORANDUM OF POINTS AND AUTHORITIES

### ARGUMENT

#### VIII. RELIEF BY CERTIORARI OR WRIT OF MANDATE IS THE APPROPRIATE REMEDY FOR THE SUPERIOR COURT'S ORDER

Because California does not permit an appeal from contempt proceedings, CCP § 1222; *O.P. Gale v. Toulumne County Water Co.*, 169 Cal. 46, 50, 145 P. 532 (1914), petitioner CSI seeks a writ of certiorari, or, in the alternative, a writ of mandamus. A writ of certiorari is appropriate when a trial court has acted in excess of its jurisdiction in a contempt proceeding. *Taylor v. Superior Court of Los Angeles County*, 20 Cal. 2d 244, 246, 125 P. 2d 1(1942); *Butler v. Butler*, 255 Cal. App. 2d 132, 136, 62 Cal. Rptr. 825 (1967) (“*Certiorari* will lie when the proceedings are absolutely void for want of jurisdiction.”). A writ of mandamus is appropriate when the trial court “in effect refused to enforce a plain provision of a judgment.” *Id.* Since the current petition would appear to fit into either, or both, of these categories, CSI has phrased its request in the alternative. See, *Pecks Liquors, Inc. v. Superior Court*, 221 Cal. App. 2d 772, 775, 34 Cal. Rptr. 735 (1963) (“When a pleader is in doubt as to the type of writ he should seek it is proper to state his prayer in the alternative form, as petitioner has done here.”) (citation omitted); 8 Witkin, *Cal. Proc. Extraordinary Writs* § 231(a) (1997) (stating that “the distinctions between the functions of the various extraordinary writs are not as clearly drawn as might be desired”); *id.* at § 231(d) (so long as the appellate court has an adequate record before it and there is no attempt to appeal from a non-appealable judgment, “the cases uniformly follow the modern principle of pleading that neither

mislabeling nor a defective prayer will bar relief justified by proper allegations and proof") (citations omitted).

Moreover, CSI, the party on whose behalf the injunction was entered, is an interested party in the outcome of the contempt proceedings below and is entitled to review of the contempt proceeding by way of writ:

[W]here, in a proceeding instituted by the beneficiary of a judgment granting an injunction the disobedience of which is made to appear, the court without any ground shown therefor denies to such beneficiary the process of the court, which constitutes the only means of enforcing the judgment, such order should be annulled, since otherwise the judgment solemnly pronounced would be an idle act.

*Goodall v. Superior Court*, 37 Cal. App. 723, 174 P. 924 (1918). Thus, CSI has standing to bring this petition. *Taylor*, 20 Cal. 2d at 247, 125 P.2d 1 (petitioner has right to question the [trial court's] order [refusing to hold party and his attorneys in contempt] by writ of certiorari" because the petitioner, "for whose protection the injunction was granted," is "a party beneficially interested in the ruling" and is "not a stranger to the record"); *Butler*, 255 Cal. App. 2d at 136, 62 Cal. Rptr. 825 (where contempt proceedings instituted by applicant were dismissed by trial court "the extraordinary writ of *mandamus* will issue in contempt proceedings when the applicant has a clear right, and no other specific and adequate remedy"); cf. *Reifler v. Superior Court*, 39 Cal. App. 3d 479, 485, 114 Cal. Rptr. 356 (1974) (petitioner has standing because "an indirect civil contempt is an action to protect the rights of a party to the litigation . . . and not simply a proceeding to preserve the power of the court.") (citation omitted). CSI was the beneficiary of the

injunction, which was issued to protect its contract rights.. This interest is more than sufficient to confer standing.

**IX. THE LOWER COURT ERRED IN DISCHARGING THE SENTENCES  
FOR THE FIRST, SECOND, AND THIRD ORDERS OF CONTEMPT AND  
SHOULD BE ORDERED TO ENFORCE THE PLAIN TERMS OF THE  
ORDERS**

A. Contempt Orders Are Final, Conclusive Judgments

Judge Duryee had no jurisdiction to alter the final and conclusive sentences for the First and Second Orders of Contempt, or to essentially override the sentence imposed in her own final contempt order. The original orders must be enforced.

"[J]udgments and orders of a court or judge made in cases of contempt are final and conclusive . . . and the court or judge retains no jurisdiction to alter a completed judicial act." See *County of Lake v. Superior Court*, 67 Cal. App. 3d 815, 136 Cal. Rptr. 830 (1977) (citing CCP § 1222); CCP § 1222 ("The judgment and orders of the court or judge, made in cases of contempt, are final and conclusive."); *O.P. Gale v. Toulumne County Water Co.*, 169 Cal. 46, 50, 145 P. 532 (1914); *Board of Med. Exs. v. Terminal-Hudson Elecs., Inc.*, 73 Cal. App. 3d 376, 388-89, 140 Cal. Rptr. 757 (1977); *Butler v. Butler*, 255 Cal. App. 2d 132, 135, 62 Cal. Rptr. 825 (1967). In *County of Lake*, the court of appeals held that even though the lower court entered a second contempt judgment merely to correct deficiencies in its first judgment, "*it had no authority to enter another and different judgment . . .*" 67 Cal. App. 3d 815, 136 Cal. Rptr. 830 (1977) ("The finding of guilt in particulars specified and the formal imposition of sentence therefore

constituted judicial action complete and final, and it was no longer open to the court to make any further or different order therein.”) (emphasis added).

Judge Duryee also lacked authority to discharge the final sentences that had been imposed. In the First and Second Orders of Contempt, Judge Thomas found Armstrong guilty of contempt and sentenced him to fines totaling \$3,600 and 28 days of confinement. In the Third Order of Contempt, Judge Duryee sentenced Armstrong to a \$1,000 fine and five days of confinement. These sentences were criminal contempt sanctions, primarily designed to punish Armstrong for his repeated flouting of the protective order and his avowed intent to continue to flagrantly violate that order. Their purpose was to “vindicate the dignity [and] authority of the court.” See *People v. Batey*, 183 Cal. App. 3d 1281, 1284, 228 Cal. Rptr. 787 (1986). In no way were these sentences conditional on Armstrong’s future compliance. Even if they could somehow be so construed, Armstrong’s continued pronouncements that he had disobeyed the court order and would continue to do so because, in his view, the court’s injunction was “illegal, unconstitutional, greatly stupid, impossible to perform, anti-public policy, anti-American, anti-religion, diabolical, insane and clearly unenforceable,” Exs. Tab 15, [Pg. Nos. 213, 222-223], unquestionably would not have satisfied any such condition.

Judge Duryee lacked the jurisdiction to discharge these sentences and should be ordered to enforce the plain terms of the final contempt judgments.



B. The Discharge of the Contempt Sentences Was Not a Lawful Remission

The discharge of these sentences is not properly viewed as a lawful remission, Armstrong made no motion to remit these sentences; thus, the terms of those sentences were not properly before the court.

Moreover, even if the issue were properly before the court, no grounds for remission of Armstrong's contempt sentences existed here. "*In unusual cases*, even though a contempt judgment is sustained, if the violation was the result of an honest mistake of law, and compliance is ultimately obtained, either the trial or appellate court may grant a *remission of punishment*." Witkin, 9 Cal. Proc. § 347 (4th Ed. 1997) (citing *City of Vernon v. Superior Court*, 39 Cal. 2d 839, 842, 250 P.2d 241 (1952)) (emphasis added); see also *County of Lake v. Superior Court*, 67 Cal. App. 3d 815, 136 Cal. Rptr. 830 (1977) (where there are "mitigating factors," remission may be appropriate) (citing *City of Vernon*, 39 Cal. 2d 839, 250 P. 2d 241 (1952)). The only thing "unusual" in this case is the remarkable contempt which Armstrong has accorded the power and dignity of the Superior Court.

In *City of Vernon*, the California Supreme Court held that the superior court erred by denying the motion to remit the contempt sentence before it, the statutory maximum, because the petitioners, city councilmen, were punished "for pursuing in good faith what they were advised by counsel and believed were legal remedies available to the councilmen and to the city which they represented." 39 Cal. 2d 839, 843, 250 P.2d 241 (1952); cf. *In re Holmes*, 145 Cal. App. 3d 934, 944, 193 Cal. Rptr. 790, 797 (1983) (vacating contempt order and sentence because novelty of rule breached by petitioner).

In stark contrast to the councilmen in *City of Vernon*, Armstrong has acted in manifest bad faith in pursuing his repeatedly contemptuous course of conduct. First, he voluntarily accepted \$800,000 in exchange for, among other things, his agreement to be bound by all of its provisions, including Paragraph 7(D). Notwithstanding his receipt of that money, Armstrong quickly demonstrated he had no intention of abiding by the terms of that order, leading to the entry of a permanent injunction against him. Since that injunction was entered, he has repeatedly, flagrantly, and admittedly violated that order at least 201 times. Armstrong has also defiantly proclaimed his intention to continue to violate the injunction because, in his view, it was “illegal, unconstitutional, greatly stupid, impossible to perform, anti-public policy, anti-American, anti-religion, diabolical, insane and clearly unenforceable,” and because, by issuing the injunction, the Court “abetted ...illegal blackmail.” Given this history, not only was remission of the lawfully imposed sanctions for Armstrong’s repeated contempt unwarranted, it would have been a “manifest abuse of discretion” for the court to remit Armstrong’s contempt sentences under these circumstances. See *City of Vernon*, 39 Cal. 2d at 843, 250 P.2d 241.

C. The Payment of Compensatory Damages and One Voluntary Court Appearance Cannot Substitute for Lawfully Imposed Punitive Sanctions

Judge Duryee indicated that the *compensatory* damages awarded in the Second Breach of Contract Action, and Armstrong’s voluntary appearance in court for the scheduled trial in that matter, somehow relieved Armstrong of responsibility for his contempt sanctions. RT 62, 63 [Pg. Nos. 356-357]. A *compensatory* damage award against Armstrong (which Armstrong will surely never pay) in a *different* action for

*different* violations of the permanent injunction simply cannot satisfy Armstrong's outstanding contempt sanctions. See *In re Wales*, 153 Cal. App. 2d 117, 119, 315 P. 2d 433 (1957); *Bailey v. Superior Court*, 142 Cal. App. 2d 47, 53, 297 P.2d 795 (1956) ("A contempt proceeding is not a civil action, either at law or in equity, but is a separate proceeding of a criminal nature and summary character in which the court exercises but a limited jurisdiction. . .").

In addition to the errors in logic that pervade these rulings, they also amount to a complete, misguided, and ill-advised surrender of a court's power and dignity in the face of someone actively repudiating both. California courts have long recognized that compensatory damages awards and contempt sanctions have differing purposes. In contrast to compensatory damages, the "enforcement of an order of contempt in this state is not for the vindication of a private right but is for the maintenance of the dignity and authority of the court, and to preserve the peace and dignity of the people of the State of California." *H.J. Heinz Co. v. Superior Court*, 42 Cal. 2d 164, 175, 266 P. 2d 5 (1954); *American Fire Protection Serv. v. Williams*, 171 Cal. App. 2d 397, 340 P. 2d 644 (1959). Underscoring the differences between the two, courts have firmly held that compensatory damages may not be awarded in contempt actions. See *H.J. Heinz*, 42 Cal. 2d at 175 ("California has no provision for compensatory contempt proceedings. Civil damages may be collected in an ordinary civil action for an act otherwise a contempt.") (internal quotation and citation omitted); *Brewster v. Southern Pac. Transp. Co.*, 235 Cal. App. 3d 701, 711, 1 Cal. Rptr. 2d 89, 95 (1991) ("[A] court has no authority to award compensatory damages in a contempt action."); *Bailey*, *supra*, 142 Cal. App. 2d at 58,

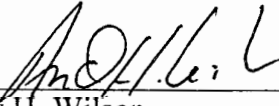
297 P.2d 795 (“[I]f real parties have suffered civil damages, a civil action is the proper remedy.”). Thus, the court erred in conflating the two and holding that the \$500,000 *compensatory* damage award discharges Armstrong’s responsibility to pay accumulated fines of \$4,600 and serve 28 days in jail, the punishment imposed for numerous contempts.

Moreover, given that immediately prior to Armstrong’s court appearance, he had willfully evaded two outstanding bench warrants since 1997, it is difficult to understand how *one* voluntary appearance could satisfy the five additional days of jail time to which Judge Duryee herself sentenced Armstrong.

#### **X. CONCLUSION**

The orders discharging Armstrong’s contempt should be vacated and the original sentences reinstated.

Dated: July 15, 2004      WILSON CAMPILONGO LLP

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Attorney for Pctitioner

**PROOF OF SERVICE**

I, the undersigned, declare:

I am employed in the County of Marin, State of California. I am over the age of 18 and not a party to the within action; my business address is 475 Gate 5 Road, Suite 212, Sausalito, California 94965.

On July 16, 2004, I served the foregoing document(s) described as follows:

**PETITION FOR A WRIT OF CERTIORARI OR, IN THE  
ALTERNATIVE, A WRIT OF MANDAMUS; and EXHIBITS, VOL. I & II  
IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

XX BY MAIL:

\_\_\_ BY FEDERAL EXPRESS OR OVERNIGHT COURIER

\_\_\_ BY HAND DELIVERY AT COURT EX PARTE HEARING.

Ford Greene, Esq.  
HUB Law Offices of Ford Greene  
711 Sir Francis Drake Blvd.  
San Anselmo, CA 94960-1949

Marin County Superior Court  
Hon. Lynn Duryee  
3501 Civic Center Drive  
San Rafael, CA 94913

Executed on July 16, 2004, at Sausalito, California

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_ (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Angela Parker  
(Type or Print Name)

Angela Parker  
(Signature)